

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ALABAMA, EASTERN DIVISION**

In Re:	)	
John R. Williams	)	Bankruptcy Case No.
SSN: xxx-xx-8227	)	
Carlyn R. Williams	)	19-40650-JJR-7
SSN: xxx-xx-7588	)	
95 Moss Hill Lane	)	Chapter 7
Pell City, AL 35128	)	
Debtors.	)	

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Rocco J. Leo, as Trustee of the Bankruptcy Estate of John R. Williams and Carlyn R. Williams,	)	
	)	
Plaintiff,	)	Adversary Proceeding No.:
	)	
vs.	)	20-40006-JJR
	)	
Capstar Bank fka American Security Bank and Trust, Trustmark National Bank and Jeffrey R. Williams,	)	
	)	
Defendants.	)	

**PLAINTIFF'S RESPONSE TO CAPSTAR BANK'S MOTION TO DISMISS**

Comes now Rocco J. Leo, Trustee, by and through his attorney, and responds to the Capstar Bank's Motion to Dismiss and states the following:

1. The Motion to Dismiss sets out the limited premise that there is no Tennessee Code Section which states that just because one co-owner did not sign the Deed of Trust that the whole Deed of Trust is invalid.
2. Tennessee Code Section 66-5-106 states:


No deed of conveyance for lands, in whatever manner or form drawn, shall be good and available in law, as to strangers, unless it is acknowledged by the vendor, or proved by two (witnesses upon oath), in the manner prescribed in Chapter 22 and 23 of this Title and registered by Register of the County where the land lies. All deeds so executed shall be valid and pass estates or land or right of other

estates, without liberty of season, attornments, or other ceremony in the law whatever.

3. In this case, two of the owners have signed and had their signature authenticated as required by the Tennessee Code. However, not only has Jeffrey R. Williams not had his signature authenticated, he has not even signed the Deed of Trust.
4. Tennessee Courts have held that an unauthenticated signature renders the whole Deed of Trust invalid as to third parties such as a lien creditor which is the position of the Trustee.
5. In re Crim and Eva M. Lemeh vs. EMC Mortgage Corporation 81 S.W. 3<sup>rd</sup> 764, (Tenn. 2002) (attached), on a Rule 23 Certified question from bankruptcy Judge Lundin that substituted non-compliance with the statutory prescribed forms rendered a Deed of Trust invalid as to a judicial lien creditor.
6. Other Bankruptcy Courts have ruled other improperly authenticated Deeds of Trust are invalid as to third parties. In re Airport-81 Nursing Care, Inc. 29 B.R. 501 (E.D. Tenn. 1983) and In re: Hutchens 69 B.R. 402 (E.D. Tenn. 1987) both attached.
7. The Tennessee Code Section sets up the requirement for a Deed of Trust, and if they are not met, then the Deed of Trust is not valid as to third parties.

Wherefore, upon the above-stated premises, the Plaintiff/Trustee requests this Court enter an Order denying Capstar Bank's Motion to Dismiss.

Dated the 20<sup>th</sup> day of May, 2020.

  
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Max C. Pope, Jr.  
Attorney for Trustee, Rocco J. Leo

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**CERTIFICATE OF SERVICE**

I hereby certify that on the ~~28<sup>th</sup>~~ day of May, 2020, I have served a copy of the **foregoing Plaintiff's Response to Capstar Bank's Motion to Dismiss** on the parties listed below by depositing the same in the United States Mail, postage prepaid and properly addressed, via electronic mail at the e-mail address below, unless the party being served is a registered participant in the CM/ECF System for the United States Bankruptcy Court for the Northern District of Alabama, service has been made by a "Notice of Electronic Filing" pursuant to FRBP 9036 in accordance with subparagraph II.B.4. of the Court's Administrative Procedures **as indicated below:**

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